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October 16, 2003

William Foster
Chief, Regulations and Procedures Division
Alcohol & Tobacco Tax & Trade Bureau
Department of the Treasury
ATTN: Notice Number 4
P.O. Box 50221
Washington, DC 20091-0221

Re: TTB Notice 4. Flavored Malt Beverages and Related Proposals
Dear Mr. Foster:

I write to comment on TTB Notice 4, Flavored Malt Beverages and Related Proposals, and to urge TTB to adopt a "majority" flavored malt beverage ("FMB") formulation standard instead of the extreme 0.5% alcohol by volume limit proposed in Notice 4. Pennsylvania has a considerable stake in the outcome of this rulemaking. I accordingly urge TTB to minimize any new regulations' impact on businesses and workers in the brewing industry and to help preserve healthy competition in the malt beverage market.

A major beverage alcohol bottling facility is located just outside of Allentown, Pennsylvania. It employs over 120 people and contributes millions to the local economy through wages and taxes paid, services purchased and by other means. Nearly \$50 million has been invested in this site over the last three years. These jobs in Allentown rely on the production, bottling and packing of a leading line of FMBs, and any regulation that threatens the market position of these products puts those jobs at risk.

Most FMBs on the market today were developed in reliance on longstanding policies of TTB and its predecessor, the Bureau of Alcohol, Tobacco & Firearms. Those policies placed no limit on the amount of alcohol that flavors could contribute to products containing 6% alcohol by volume or less. The Bureau in 1996 suggested that rulemaking "in the near future" might limit the use of flavors in such products, but it abandoned that rulemaking project and did not even mention it in the regulatory agenda that every federal agency must publish on a semi-annual basis. Now Notice 4 again seeks to change the rules, conceding that by imposing limits for the first time on the amount of alcohol that flavors can contribute to an FMB containing 6% alcohol by volume or less, it will make a "significant change" to existing policies. I want to make sure that any changes do not devastate the FMB category or favor some FMB producers at the expense of others.

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As you know, the larger a change in rules, the greater the costs and uncertainty imposed by that change. Notice 4 admits that the law supports a formulation standard requiring that a majority (more than 50%) of the alcohol in an FMB derive from its fermented beer base - a standard closer to the existing status quo than the 0.5% standard. Why, then, does Notice 4 propose a more rigid standard requiring even greater changes, all at the expense of companies that relied in good faith on the federal policy Notice 4 now seeks to change?

Given these facts, I urge TTB to carefully consider the competitive aspects of a 0.5% standard on the U.S. market. Notice 4 admits that the law would support a majority standard yet TTB inexplicably proposes to promulgate a far more stringent standard without submitting to a cost/benefit analysis. A majority standard would address the consumer and state issues cited in the Notice as TTB's reason for acting. I accordingly see no rationale for a 0.5% standard that will favor some companies at the expense of others.

I am quite sure that TTB does not want to deliberately favor some FMB producers at the expense of their competitors. Yet that is the likely impact of Notice 4. I accordingly urge you to issue final regulations adopting a majority standard that all current FMB producers can accept. Thank you for your assistance.

Sincerely

Rick Santorum
United States Senator